

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

3 UNITED STATES OF AMERICA, }  
4 Government, } No. 08 CR 888  
5 vs. } Chicago, Illinois  
6 ROD BLAGOJEVICH, } July 15, 2010  
7 ROBERT BLAGOJEVICH, }  
8 Defendants. } 10:28 o'clock a.m.

VOLUME 25  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES B. ZAGEL  
AND A JURY

## 12 | For the Government:

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The following proceedings were had out of the  
presence of the jury in open court:)

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THE CLERK: 2008 CR 888, United States versus

Blagojevich.

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MR. SCHAR: Good morning, Your Honor.

Reid Schar, Chris Niewoehner and Carrie

Hamilton on behalf of the United States, joined

today by Marc Krickbaum, Bill Ridgway, Laurie

Barsella, Stephanie Zimdahl.

1 MR. ETTINGER: Good morning, Your Honor.

2 Michael Ettinger for Robert Blagojevich.

3 MR. GOLDSTEIN: Good morning.

4 Aaron Goldstein and Sheldon Sorosky on behalf  
5 of Rod Blagojevich, also present is Lauren  
6 Kaeseberg.

7 THE COURT: We begin with tab 93, I think.

8 MR. GOLDSTEIN: Correct, Your Honor.

9 THE COURT: The government's position?

10 MR. SCHAR: Judge, assuming it's going to be  
11 offered for some type of state-of-mind argument, I  
12 can see if the defendant testifies, but the first  
13 section deals with budget issues, but this turns  
14 into another meandering discussion related to a  
15 rehash of additional conversations that occurred  
16 with additional people not part of this.

17 I'm not sure that that would be relevant even  
18 if the defendant testifies, to the extent it would  
19 be both cumulative and confusing, and certainly it  
20 wouldn't fall directly under 803(3), not without  
21 some delineation of exactly what the 803(3)  
22 statements are at this point.

23 MR. GOLDSTEIN: Your Honor, it is state of  
24 mind. This shows a conversation between  
25 Mr. Blagojevich and Mr. Greenlee. They are

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1 discussing this deal again, they are discussing what  
2 needs to take place for this deal to occur. This is  
3 clearly what is on his mind, Mr. Blagojevich's mind,  
4 as he's speaking to Mr. Greenlee discussing this  
5 deal.

:31AM

6 There are, to a lesser extent, there are  
7 contradictions between what Mr. Greenlee testified  
8 to and to what he's discussing in this conversation,  
9 as well, Your Honor.

:31AM

10 THE COURT: Well, whatever impeachment there  
11 is in Greenlee, as to Greenlee, based on classical  
12 impeachment as opposed to contradiction, whatever  
13 could have been done or whatever they wanted done,  
14 defendants wanted done, is done; he's off the stand.

:32AM

15 To the extent that you think some things  
16 contradict the description given by Greenlee, maybe  
17 that's okay, but my main concern is here that we're  
18 not so much dealing with state of mind but a  
19 situation in which the defendant, Rod Blagojevich,  
20 gets on the witness stand and gives his version of  
21 what he was doing, what was in his mind.

:32AM

22 And he could testify, and I assume he would  
23 testify, and I assume this with respect to other of  
24 these transcripts, that he is going to talk about  
25 healthcare, capital budget, lots of things that he

:33AM

1 thought were good and that this is what he wanted to  
2 get done.

3 And he testifies that this is clearly what he  
4 told Greenlee, and that they discussed how this  
5 could be done without raising taxes. Although,  
6 Greenlee's answer here seems to me to be "well, we  
7 don't actually have to raise taxes, we'll just raise  
8 fees," and usually people who are in elected office  
9 when they say they don't raise taxes, don't like to  
10 be asked questions about raising fees because  
11 they're still paid by the public. But if what he  
12 wants to say is is that he said these things to  
13 Greenlee, that he had a program, I don't see that  
14 the government is disputing anything, because  
15 they're not disputing any of that, this conversation  
16 with respect to the earlier part of it where he is  
17 talking about the program is extraneous.

18 If they do dispute it, that's another issue.  
19 And I'm not going to confine the defense to a  
20 situation where it doesn't come in unless the  
21 government stands up and explicitly says he didn't  
22 do it. There might be stuff in the tenor of the  
23 cross-examination that makes it clear that it's the  
24 government's position, and, if that occurs, some of  
25 this stuff does serve to corroborate his version and

1 would be played.

2 So this has to wait to see what his testimony  
3 is. And I'm not talking about the stuff about  
4 closing tax loopholes and commercial fee increases,  
5 and a variety of other stuff.

6 And that also includes the stuff discussing  
7 health and health insurance policy. And I have some  
8 additional reluctance with respect to that because  
9 of the vagueness of that discussion, but he can  
10 testify to all of this stuff and we'll see the  
11 extent to which the government disagrees,  
12 particularly in light of the fact that, for all  
13 practical purposes, a good deal of this came in in  
14 Greenlee's testimony, anyway.

15 Now, the rest of this having to do with who  
16 sits on the senate seat is a series of things that  
17 his recounting, that Defendant Blagojevich is  
18 recounting what he said to people, and that has less  
19 to do with his state of mind than the way he is, and  
20 I'm using his word, he's playing this because he  
21 talks about plays, and he can continue to talk about  
22 his plays, but none of this shows a state of mind  
23 which in any way contradicts or disputes the  
24 evidence that's already been in.

25 He was looking about who he should appoint

:35AM

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1 and was considering a bunch of people in turn, and  
2 he asked a lot of people about who he should pick.  
3 I don't divine state of mind from this, unless the  
4 government gets up here and alleges that he had  
5 never really cared what people had to say, which I  
6 very much doubt that they're going to contend in  
7 this case. I just think it's endlessly repetitive.  
8 There's a lot of people mentioned, a lot of  
9 candidates, it's just more of the same thing, and  
10 deals with issues that I don't think they're going  
11 to dispute. If they do, it could open the door to  
12 that.

13 Tab 96.

14 Let's pause for a second here.

15 (Brief pause).

16 THE COURT: The government's view?

17 MR. SCHAR: Judge, it's similar, it's kind of  
18 a rambling nature. It's another conversation with a  
19 polster which goes through a variety of individuals,  
20 obviously it picks out certain sections. Again, I  
21 think based on what Your Honor just said, it's a  
22 rehash of the same thing but with a different  
23 individual. So for all the reasons Your Honor has  
24 already said, it wouldn't be appropriate.

25 To the extent it is, there has to be a lot

:39AM  
1 more of this call played so that the proper context  
2 could be put in place as to a whole variety of  
3 different individuals, including the fact that they  
4 cherry picked with one individual when, in fact,  
5 divided the call suggests to Defendant Blagojevich  
6 that he would go with a completely different  
7 individual he was thinking of that day. Unless  
8 there is some delineation exactly what was his state  
9 of mind, I don't see it at this point. Obviously,  
10 on cross-examination.

:40AM  
11 THE COURT: The problem I have with this one,  
12 particular with this one is, there seems to be a  
13 complete absence of substance, and there are a  
14 couple on there later on this that you don't even  
15 know what people are referring to. They're talking  
16 about something in exchange, but nobody says what  
17 it's in exchange for. Granted, that there may be a  
18 subtext here that we don't know about. Maybe  
19 Defendant Blagojevich and Yang had so many  
20 conversations over the years that they understand  
21 what the reference is when one asks something, but  
22 there is nothing here that the jury can really  
23 comprehend.

:40AM  
24 what you're entitled to do, and basically  
25 it's the same rule, the defendant will testify and

:41AM  
1 we'll see if the government disputes stuff, but the  
2 truth is with this one, I don't think there's a lot  
3 here for the government to dispute, because there's  
4 really nothing there. It's just a lot of talk that  
5 is, even by the standards of this case, notably  
6 inconclusive. There is really no clue here as to  
7 what his state of mind is.

:41AM  
8 what he can do is testify what his state of  
9 mind is, but this does nothing to corroborate or  
10 contradict it. It's just the same thing that he's  
11 gone through again and again, except this one has  
12 even fewer details. I just don't see that this is  
13 any help at all to anybody.

:41AM  
14 MR. GOLDSTEIN: I mean, first, "cherry  
15 picking" I find a bit ironic, the word "cherry  
16 picking," but nonetheless we are trying to put in  
17 certain elements that are relevant to our case.  
18 What you have is a state of mind, first, as to Rod  
19 Blagojevich's view of Jesse Jackson, Jr.;  
20 specifically talks about not wanting to pick him,  
21 that's a contradiction to what the government has  
22 alleged that he wanted to pick Jesse Jackson, Jr. in  
23 exchange for campaign contributions; there's a  
24 discussion of the emissary and whether Senator  
25 Durbin would be an emissary or not, that goes to the

:42AM

1 state of mind as to what Rod Blagojevich was  
2 thinking as to his strategy on how to pull off a  
3 deal like this; and then, generally speaking, about  
4 this deal, what his state of mind is as to this deal  
5 on this date and time.

:42AM  
6 THE COURT: I just don't think it illuminates  
7 anything, so I'm sustaining the objection.

8 Tab 98, why do you want this?

9 MR. GOLDSTEIN: Tab 98, the government has  
10 given us their positions on each of these tabs, and  
11 they did indicate they had no objection, but under  
12 the rule of completeness we wanted to add Page 2,  
13 line 20, if that's their position today, we're in  
14 agreement with that.

:43AM  
15 THE COURT: That's the government's position?

16 MR. SCHAR: Judge, we're conferring with  
17 that.

18 THE COURT: What? You're conferring?

19 MR. SCHAR: We're conferring.

:43AM  
20 (Brief pause).

21 MR. SCHAR: Judge, no objection, assuming the  
22 totality of the call is played.

23 THE COURT: Well, it's interesting because,  
24 on my little sheet of notes, I said admitted. So we  
25 just had a pointless discussion.

1           Tab 99, the government's position?

2           MR. SCHAR: Again, it goes to the same  
3 reasons, with a polster.

4           THE COURT: I do have one question because it  
5 will illuminate my thinking about this. Turn to  
6 Page 19.

7           (Brief pause).

8           THE COURT: You got Page 19?

9           MR. GOLDSTEIN: Yes.

10          THE COURT: It is a mystery to me, which you  
11 may be able to solve, why under any circumstances  
12 your client would want this played to the jury.

13          MR. GOLDSTEIN: why not? I mean, Your Honor,  
14 he's discussing his state of mind here.

15          THE COURT: And the state of mind he's  
16 discussing is he wants to shut down state government  
17 and try to blame it on somebody else? I just don't  
18 understand why.

19          MR. GOLDSTEIN: It' --

20          THE COURT: Now, if you tell me that he  
21 wasn't serious about that, I believe you, but --

22          MR. GOLDSTEIN: Well, I don't necessarily see  
23 that that's the interpretation that one can garner  
24 from this, it's an explanation of what's going on in  
25 the state at that time.

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:46AM  
1           I don't see it as necessarily him wanting to  
2 -- there's further discussion as to his adviser--in  
3 the government's view, polster--is giving him  
4 suggestions, and him, Harris, talking about this  
5 discussion with Mr. Yang about the particular  
6 subject.

7           (Brief pause)

8           THE COURT: You like what's in the note or  
9 not? It's up to you.

:46AM  
10          MS. KAESEBERG: We're interpreting.

11          MR. GOLDSTEIN: We need a handwriting class.  
12          The point of the matter is, we want it. It  
13 explains what he is going through in the state at  
14 that time and it's going to be explained.

:47AM  
15          And my notes, also, is that the government  
16 had sort of half and half objection.

17          MR. SCHAR: I think that while we don't have  
18 an objection to the part of shutting down the  
19 government, but we would object to the other  
20 portions. We don't think they are any different  
21 from the last conversation, it's all out there.

22          MR. GOLDSTEIN: You won't cherry pick that  
23 portion.

24          THE COURT: I believe it's duplicative, it  
25 adds nothing new. But, again, I reserve what

1 happens during the course of his testimony, either  
2 direct or cross, some of it might come in.

3 It's possible, in fact, that the government  
4 might want to put some of it in, in which case they  
5 will probably have a different edit than you do and  
6 I'll consider that as time goes on.

7 Tab 102, the government's position?

8 MR. SCHAR: Judge, this is the government's  
9 read of it: It's totally irrelevant, hearsay, 403.  
10 They want the entirety of the call which deals with  
11 so many different topics that have nothing to do  
12 with the charges in this case. It's just not clear  
13 to the government at all how this goes to their  
14 theory of the case.

15 MR. GOLDSTEIN: Your Honor, it is a long  
16 call, I don't think that is any reason to bar the  
17 call.

18 THE COURT: No, it's not; it's not. It's  
19 just an argument, I guess, based on waste of time,  
20 but there is nothing, per se, that's wrong with a  
21 long call.

22 MR. GOLDSTEIN: This is a call between Rod  
23 Blagojevich and Chris Kelly, a coconspirator that  
24 the government claims, they put his picture up on  
25 the wall numerous times. This is a conversation

1 that has --

2 THE COURT: But you do realize the only way  
3 you can get a coconspirator statement in is to prove  
4 that the United States Government was a conspirator.

:49AM

5 MR. GOLDSTEIN: That the United States  
6 Government was a conspirator?

7 THE COURT: Yeah, that's basically the rule  
8 but often forgotten by counsel for defense in  
9 federal criminal cases.

:49AM

10 MR. GOLDSTEIN: Fair enough, Your Honor.  
11 Nonetheless, what we have, just on the two  
12 individuals on the call itself, creates a lot of  
13 relevancy.

:50AM

14 As to the substance of the call, what you  
15 have is, there's a lot of discussion, particularly  
16 on Page 55 there's a mention of Bernie Kozar who is  
17 mentioned in the trial, and this explains why the  
18 governor's state of mind as to this horse racing  
19 bill and explains his concern as to moving forward  
20 at a certain time with the bill.

:50AM

21 He gets a call from Chris Kelly, completely  
22 out of the blue, hadn't spoken to him for sometime,  
23 and then Chris Kelly is mentioning this, and you'll  
24 see in these other calls some discussion of it, and  
25 that explains his concern as to why he was not

1 signing the bill.

2 Now, there are, I must acknowledge, on  
3 Page 46, line 13, through Page 48, line 10, there  
4 are mentions of subjects that is in Your Honor's  
5 order as far as motion in limine. So we understand  
6 that, we have no problem omitting that, but besides  
7 that, Your Honor, this is a very relevant call and  
8 explains the state of mind of Rod Blagojevich of why  
9 he moved forward or didn't move forward on the horse  
10 racing.

11 THE COURT: But you've offered the entirety,  
12 the entire conversation.

13 MR. GOLDSTEIN: I understand that, Your  
14 Honor.

15 THE COURT: I reject the offer of the entire  
16 conversation. And, again, there's something in here  
17 that I don't understand why you would think it would  
18 benefit your client, and that's Page 41, lines 28  
19 through line 38, but if you want to submit an edited  
20 version of this, I will give you leave to do that.

21 MR. GOLDSTEIN: Will do.

22 THE COURT: Tab 121, what's this being  
23 offered for?

24 MR. GOLDSTEIN: Your Honor, there's two  
25 issues; one is state of mind as to, in particular, a

1 call between Harris and Emanuel. The state of mind  
2 of Mr. Emanuel, but even if it's not as to state of  
3 mind, it explains the actions that Mr. Emanuel took  
4 after this call.

:53AM

5 This is a call in which Harris -- there's a  
6 discussion between Harris and Emanuel talking about  
7 the senate seat. Mr. Emanuel then contacted  
8 Mr. Durbin, Mr. Axelrod, as to the subject, and  
9 explains, this call explains why he then went  
10 forward and made that contact with those individuals  
11 about the senate seat in particular.

:53AM

12 THE COURT: Right. And this is relevant to  
13 your case because?

:53AM

14 MR. GOLDSTEIN: Well, it explains why or how  
15 the process was to get to Lisa Madigan done.

16 MR. SCHAR: It clearly doesn't go to anyone's  
17 state of mind that is relevant to this case.

:54AM

18 THE COURT: It's hearsay, does not fall under  
19 any hearsay exception. And if you think that this  
20 is significant, there are other ways to prove this.  
21 The objection is sustained.

22 127.

:54AM

23 Incidentally, we will be taking a break to do  
24 a telephone conference at 11:00, but it's likely to  
25 be a very short break.

1           MR. GOLDSTEIN: And I do believe, Your Honor,  
2 we have agreement on the next amount of calls coming  
3 up.

4           THE COURT: Okay.

:54AM

5           127, is there an objection to 127?

:54AM

6           MR. SCHAR: Yes, Judge. It's not relevant to  
7 anything. Reporting back from another conversation  
8 to the defendant about legal issues that have  
9 nothing to do with the specific charges in this  
10 case. So it's 403 at a variety of different levels,  
11 and there's no hearsay exception that could possibly  
12 lead to the admissibility.

:55AM

13           MR. GOLDSTEIN: Your Honor, this goes to  
14 state of mind. The government put in a call  
15 discussing the factors at one point that the  
16 Governor's decision-making as to the senate seat a  
17 legal, personal, political. This call explains the  
18 Governor's thinking as to why he came up with those  
19 rankings at that time, Your Honor. So this explains  
20 state of mind, it explains why he said some of the  
21 things he did on prior conversations.

:55AM

22           THE COURT: That explanation, one, has to  
23 come from his mouth; the second thing is, as I read  
24 this, what you have is a conversation in which the  
25 Governor and Mr. Quinlan are trying to guess what

:56AM

:56AM  
1 the meaning of still a third lawyer told them about  
2 what a witness may or may not have said, when it is  
3 quite clear from Quinlan's initial comment that the  
4 lawyer didn't actually tell them what his client  
5 said. This is just a bunch of guys and people  
6 involved speculating on what somebody might have  
7 said.

:56AM  
8 If your proposition that you intend to prove  
9 is that at one point in time the Defendant Rod  
10 Blagojevich was extremely curious about what  
11 witnesses were saying about him, I think the  
12 government would likely be willing to stipulate to  
13 that being his state of mind.

:57AM  
14 There's nothing of substance here, just a  
15 bunch of people guessing at what somebody said. And  
16 the only state of mind that I see revealed by this  
17 is the one I just stated, that they would like to  
18 know, as would 99 percent of sane people in his  
19 position. You want to know what people are saying  
20 about you, you want to know what they're saying  
21 about you and they haven't been told, they're trying  
22 to guess, like overhearing a session of people  
23 trying to read the rooms, which is not very popular  
24 now and hasn't been since the middle ages, but it  
25 was justified as informative. So I'm sustaining the

:57AM

1 objection.

2           142.

3           MR. SCHAR: 142 and 143 the government is not  
4 going to object if the defendant testifies.

:58AM

5           THE COURT: That's what I wrote. I wrote,  
6 "if testify" on it.

7           Do you have a problem with that one?

8           MR. GOLDSTEIN: No.

9           THE COURT: Okay.

:58AM

10          MR. GOLDSTEIN: Your Honor, as to 146, the  
11 next one, the government indicated to us that  
12 certain sections appear to be admissible as to state  
13 of mind and then gave other lines that should be  
14 added, I believe, for completeness. If that is the  
15 case, we have no objection to the suggested lines  
16 being admitted.

:58AM

17          THE COURT: You'll be hearing from the  
18 government shortly. They're conferring.

19          (Brief pause).

:59AM

20          MR. GOLDSTEIN: They have specific portions  
21 of the call they wanted admitted, narrowing what we  
22 wanted, just so it's clear.

23          (Brief pause).

:59AM

24          MR. SCHAR: Judge, I think there were three  
25 specific sections we didn't have objections to. You

1 have those pages and line numbers?

2 THE COURT: Yeah.

3 MR. SCHAR: This is Page 8, line 18.

4 THE COURT: Hold it.

5 (Brief pause).

6 THE COURT: To?

7 MR. SCHAR: To Page 9, line 4.

8 THE COURT: Okay.

9 MR. SCHAR: Picking it up again on Page 14,  
10 line 1.

11 THE COURT: 14, line what?

12 MR. SCHAR: Yes, sir.

13 THE COURT: What line?

14 MR. SCHAR: Through line 30 of that page.

15 THE COURT: The entire Page?

16 MR. SCHAR: The entire --

17 No, line 30, Judge. Sorry. Not the entire  
18 page.

19 THE COURT: I think maybe you mean line 29.

20 MR. SCHAR: I probably do.

21 (Brief pause).

22 MR. SCHAR: I'm sorry, beginning on line 1  
23 and ending line 30.

24 THE COURT: Okay.

25 (Brief pause).

:59AM

:00AM

:00AM

:00AM

:01AM

5240

1 THE COURT: Okay, what's the next passage?

2 MR. SCHAR: Page 19.

3 THE COURT: Okay.

4 MR. SCHAR: Line 2 through line 17.

:01AM

5 THE COURT: Okay.

6 Now your position.

7 MR. GOLDSTEIN: We agree with that.

8 THE COURT: You agree to what would be read  
9 and no more?

:01AM

10 MR. GOLDSTEIN: Correct.

11 I thought there was one more exception.

12 THE COURT: There was one more.

13 MR. SCHAR: Page 21, line 38.

14 THE COURT: Say it again.

:01AM

15 MR. SCHAR: Page 21, Judge, line 38.

16 THE COURT: Ending at?

17 MR. SCHAR: Page 22, line 8.

18 THE COURT: Are you satisfied with that?

19 MR. GOLDSTEIN: Yes.

:02AM

20 THE COURT: Okay. That will be played.

21 MR. GOLDSTEIN: Thank you.

22 THE COURT: I'm going to stop now.

23 The next one is tab 158.

24 15, 20 minutes, tops.

:02AM

25 (Recess.)

1           THE MARSHAL: Ladies and gentlemen, please  
2 remain seated.

3           THE COURT: The government's position with  
4 respect to 158?

:25AM

5           MR. SCHAR: No objection, Judge.

:25AM

6           THE COURT: I have one more that's not  
7 tabbed.

8           MR. GOLDSTEIN: Correct; Section 117.

:25AM

9           Does your Honor have a copy?

:25AM

10          THE COURT: I got a couple of --  
11 (Brief pause).

12          THE COURT: Yeah, I have it. It's in here.  
13 The tab has no number.

:26AM

14          MR. GOLDSTEIN: Yes.

15 (Brief pause).

16          THE COURT: The government's position?

:26AM

17          MR. SCHAR: Judge, we're objecting as  
18 irrelevant, hearsay. I don't see anything in here  
19 that goes to state of mind.

20          THE COURT: This is the one that I was  
21 referring to when I said you don't know what the  
22 reference are.

:26AM

23          And this actually sounds like the  
24 conversation somebody would have if they thought  
25 that they were being recorded. To give you an

1 example:

2 "I called you as soon as I got the e-mail."

3 "what? You talking about now? I just went to  
4 the restroom."

5 "I am talking about the other one."

6 Then... "I got to put this on hold."

7 And then your client:

8 "It's for, like, yeah, he is making it sound  
9 like it is urgent or something, you know  
10 anything about this?"

11 "No, but I suspect it's what I mentioned to you  
12 on the plane. I don't know anything about it,  
13 but I suspect it's that."

14 "What's that?"

15 "Remember I mentioned to you about, you know,  
16 what he thinks, a bill may help him with his."

17 "I know, that's what I think, too. I don't  
18 want, I don't want -- that's what I, I mean  
19 candidly, that's what I think it is, I don't  
20 know."

21 "That's what I think it is, too. And, you know  
22 what? That offends me, that offends me.

23 "I don't know, I don't know if that's it, I  
24 haven't spoken to him at all, I'm just  
25 guessing."

:27AM

:27AM

:27AM

:27AM

:28AM

1           what does this tell us?

2           MR. GOLDSTEIN: This is a conversation about  
3 Chris Kelly.

4           THE COURT: Okay.

:28AM  
5           MR. GOLDSTEIN: And it explains the state of  
6 mind of Governor Blagojevich when Chris Kelly called  
7 in his concerns because of the previous tab that we  
8 discussed, his concerns that Chris Kelly was trying  
9 to have some type of advocacy as this bill because  
10 he thought it somehow helped him.

:28AM  
11          So Governor Blagojevich is reporting to his  
12 lawyer his state of mind as to his concerns  
13 referencing a plane ride which was discussed in the  
14 Government's case-in-chief at least at the aftermath  
15 of that, the conversation between Harris and  
16 Quinlan.

17          THE COURT: It's too opaque for me.

:29AM  
18          MR. GOLDSTEIN: But he can certainly explain  
19 -- I mean, the call can be played, he can explain  
20 what he meant by all these things and what his  
21 understanding of Mr. Quinlan.

22          THE COURT: He can testify to this stuff, but  
23 this doesn't aid him in any way. It doesn't aid the  
24 prosecution either. It's the problem with talking  
25 about stuff and you maybe think you are being

1 overheard, you don't say anything.

2 And what the jury can derive from this about  
3 his state of mind is absolutely nothing more than  
4 what he testifies to. When I started to read this,  
:29AM  
5 I thought there's something there because this does  
6 have the kind of urgency that often justifies the  
7 admission of something that's 803(3), some reaction  
8 to something, but it's just not clear from this what  
9 it is, and it's not clear what he wants to do. It's  
:30AM  
10 just too opaque.

11 Now we're on to 167.

12 The government's position?

13 MR. SCHAR: The same position as to the last  
14 call, Judge, for the same reasons; and, in addition,  
15 there is all types of sections here in the phone  
16 call that are getting into potential sentencing date  
17 of a potential coconspirator and it has nothing to  
18 do with state of mind, and for all of the same  
19 reasons, as well as 403 we object to it.  
:30AM

20 MR. GOLDSTEIN: Your Honor, to make things a  
21 little bit easier, we indicated we want the entire  
22 call, we would only request Page 1 starting at line  
23 42 to the end of Page 6.  
24

25 And, again, this is --

THE COURT: Yeah, let me read it again.  
:31AM

1           MR. GOLDSTEIN: Okay.

2 (Brief pause).

3           THE COURT: Page 6 through?

4           MR. GOLDSTEIN: The end of Page 6.

5           THE COURT: I'll ask this question just in  
6 passing, do you regard the last exchange, Page 6,  
7 line 41 to line 46 as particularly important or not?

8           MR. GOLDSTEIN: Yes.

9           THE COURT: Now, suppose this comes in,  
10 assuming it's in, assuming there's a closing  
11 argument in this case, what is the argument going to  
12 be about why this helps the defendant?

13           MR. GOLDSTEIN: The reason why this call is  
14 relevant is it explains Mr. Blagojevich's state of  
15 mind as to this bill, this horse racing bill. He  
16 specifically says he's inclined for the bill, but  
17 he's talking to his lawyer, he's concerned about the  
18 fact that Chris Kelly has now, in essence,  
19 contaminated the process, and that explains his  
20 concern as to why he moved forward or didn't move  
21 forward to this bill.

22           The government has presented the theory that  
23 the reason why he's holding it up is to get campaign  
24 contributions, this completely contradicts that  
25 theory and explains why this bill --

:33AM

:34AM

:34AM

:34AM

:34AM

1           THE COURT: Well, wait, wait, wait. Why  
2 don't you drop the "completely" because you can't  
3 really sustain that one.

4           MR. GOLDSTEIN: That's for the jury to  
5 decide.  
:35AM

6           THE COURT: Well, what you've got is you  
7 got evidence that whatever had to do with money for  
8 racetracks, there was at least one other reason, and  
9 that's what, I think, you want to prove here, that  
10 there was one other reason, and the jury can make up  
11 its mind as to which reason might be controlling.  
:35AM

12          Even he does not appear, your client does not  
13 appear to rely completely on this conversation, but  
14 I can understand why it might conceivably support  
15 some testimony to that evidence. But that's  
16 basically what your argument is going to be.

17          MR. GOLDSTEIN: Yes.

18          THE COURT: Now the government can respond.

19          MR. SCHAR: Judge, we'll withdraw the  
20 objection.  
:35AM

21          THE COURT: Okay.

22          MR. SCHAR: I'm sorry, Judge --

23          THE COURT: Only to the part they're  
24 offering, which is Page 1, line 42, through Page 6,  
25 line 47.  
:36AM

1           MR. GOLDSTEIN: That's fine, Your Honor.

2           MR. SCHAR: Just one moment, Judge?

3           THE COURT: Sure.

4           (Brief pause).

5           MR. SCHAR: That's right, Judge.

6           THE COURT: All right.

7           172, Page 3, line 14 to the end of the call.

8           Now, when was the date of the story that  
9 precipitated this conversation?

10          MR. SCHAR: The story came out the following  
11 day. I believe, as the government indicates, they  
12 were alerted to that.

13          THE COURT: So the newspaper article appears  
14 the rough equivalent of some guy walking on the  
15 street with a sign saying "the end is near" and this  
16 is the discussion of it.

17          The government's objection?

18          MR. SCHAR: Judge, we object, obviously.  
19 It's not 803(3), it's historical looking, it's  
20 confusing because Mr. Quinlan is on the line this  
21 time and opines after the motive is fabricated,  
22 which he knows that there were potentially  
23 recordings against him, for all those reasons we  
24 would object.

25          MR. GOLDSTEIN: Your Honor, this is actually,

:36AM

:37AM

:37AM

:38AM

:38AM

1 I think, an excited utterance argument and I'll let  
2 Mr. Riebman explain to Your Honor.

3 MR. RIEBMAN: Your Honor, Elliott Riebman on  
4 behalf of Rod Blagojevich.

:38AM

5 This conversation was not the conversation  
6 the government just pointed to, that was a  
7 conversation on the following morning.

:38AM

8 This conversation occurred barely ten minutes  
9 after Rod Blagojevich learned that he might be being  
10 recorded and that John Wyma was potentially  
11 cooperating with the federal government.

:39AM

12 So this small lapse in time, from 10:29 p.m.,  
13 which is government tab 97, to 10:42 p.m., is not  
14 sufficient to destroy the distress of the excitement  
15 that Rod Blagojevich is under in this conversation.  
16 He has no time to fabricate and --

17 THE COURT: Okay, but which one is the  
18 excited utterance?

:39AM

19 Because I'll give you an example:

20 "Blagojevich" I talked to Doug like an hour and  
21 a half ago, he didn't tell me any of this."

:39AM

22 this I do not think is an excited utterance.  
23 I mean, he may be excited about it, but the content  
24 is not an excited utterance. So something here you  
25 want to identify as the excited utterance or

1       utterances?

2            MR. RIEBMAN: Yes, Your Honor, Page 4, line  
3        6.

4            THE COURT: Right. I'm there.

:40AM       5            MR. RIEBMAN: This is the first moment that  
6 Rod Blagojevich reacts to recollecting anything that  
7 he might have said, and he's telling his lawyer,  
8 without any time to fabricate, what he might have  
9 said that could have been recorded.

:40AM       10          Additionally, the tone of the defendant Rod  
11 Blagojevich's voice is clearly in distress --

12          THE COURT: So talking about line 6 through  
13 line 15?

14          MR. RIEBMAN: Yes.

:40AM       15          THE COURT: Okay. Is there anything else?

16          MR. RIEBMAN: Additionally to line 38, the  
17 statement --

18          THE COURT: Yeah. I see it.

19          (Brief pause).

:41AM       20          THE COURT: So you're offering as excited  
21 utterance--assuming the premise is laid, which  
22 actually has to sort of be laid in his testimony--he  
23 just learned about this and he said so-and-so, and  
24 then he winds up talking to people about this, in  
25 the course of talking to people about this he says:

:41AM  
1        "... was in my office, wanting to seem weird,  
2        you know, and I told them that we'd gotten  
3        Dusty Baker called me, you know, I was pressing  
4        him on a fundraiser for Vondra, you know, I  
5        said Vondra wants something, I may have said  
6        that, I don't know..."

7              then Quinlan responds, and my assumption is  
8        you're not going to attempt to say that this is  
9        an opinion of counsel?

:42AM  
10          MR. GOLDSTEIN: No.

11          MR. RIEBMAN: No.

12          THE COURT: No.

13          Then his next thing is:

:42AM  
14          "Okay, and then I'm thinking Magoon, call Magoon  
15        to see if he can do a fundraiser because, I'm,  
16        you know, one was not for the other, but Dusty  
17        Baker called me and said that they're behind  
18        payments on children with pediatric factors so  
19        that Greenlee could find the money and I called  
20        Magoon and told him Dusty Baker called, okay,  
21        and after the fact I told Wyma, look, we just  
22        did something for Children's Memorial Hospital,  
23        see if you can, they can do something for me,  
24        that's not a problem, here's the bill, stop  
25        there."

1           That's what you're offering?

2           MR. RIEBMAN: We're offering to stop at line  
3 39, Quinlan's response.

4           THE COURT: Okay. And are you going to argue  
:42AM  
5 that that's an opinion?

6           MR. GOLDSTEIN: Opinion of counsel?

7           THE COURT: Yes.

8           MR. GOLDSTEIN: As to the advice of counsel  
9 on intent, no.

:42AM  
10          THE COURT: Right. Because it's a little  
11 late in the game.

12          MR. GOLDSTEIN: Yeah, it's after the fact.  
13 we're not saying that.

14          THE COURT: Okay.

:42AM  
15          So leaving out line 39 through 40, which is  
16 Quinlan's response, this is what's on offer. Does  
17 somebody actually have this?

18          MR. SCHAR: The recording?

19          THE COURT: Yeah.

:43AM  
20          MR. RIEBMAN: Yes, Your Honor.

21          THE COURT: What?

22          MR. SCHAR: I said we have the recording, we  
23 don't have it upstairs.

24          MR. GOLDSTEIN: We have it.

:43AM  
25          THE COURT: You have it here? Can you play

1 it?

2 MR. GOLDSTEIN: Would you like it in  
3 chambers?

4 THE COURT: I've already read it out loud.

:43AM

5 MR. GOLDSTEIN: Okay.

6 MR. SCHAR: I believe it's faster if you  
7 listen to the phone call -- if you listen to the  
8 whole phone call.

:44AM

9 THE COURT: Yeah, I do want to listen to all  
10 of it.

11 MR. GOLDSTEIN: Just waiting for the  
12 speakers.

13 THE COURT: Sure.

14 (Brief pause).

:46AM

15 MR. GOLDSTEIN: Where would you like it to  
16 start?

17 THE COURT: The call you're offering -- well,  
18 actually --

:46AM

19 MR. GOLDSTEIN: You want it to start on Page  
20 3?

21 THE COURT: Yeah, start on Page 3.

22 MR. GOLDSTEIN: Okay.

23 (Tape played.)

24 THE COURT: Mr. Schar --

:49AM

25 MR. SCHAR: We still have an objection,

1 Judge.

2 THE COURT: Well, actually, that wasn't the  
3 question I was going to ask.

4 I would say that he's excited, and I would  
5 say that this is an excited utterance, the question  
6 is, once being an excited utterance, does this  
7 necessarily mean it comes in, because the defense  
8 will argue that this excited utterance was perfectly  
9 truthful.

:50AM 10 And, of course, I don't think I'm going to  
11 allow them to play it unless this is actually the  
12 testimony of the defendant, he has to testify to it.

13 The problem with this particular excited  
14 utterance is to determine what he's excited about.

:51AM 15 Is he excited about the fact that there's this  
16 charge and there's this completely innocent  
17 explanation or is he excited because he's trying to  
18 figure out some way to explain what he's already  
19 done. And, frankly, I think this is fair to give  
20 this to the jury and let them consider this. So  
21 what was played to me can be played to the jury.

22 But the issue is whether we care much about  
23 the preface. And I think the preface, which means  
24 Page 3, line 14, if the rest of it is played, it's  
25 something that I believe both sides would want in

1 because otherwise you don't have context.

2 MR. SCHAR: The only line that we'd ask to  
3 take out is the question at the end.

4 THE COURT: You mean "that's not the problem  
:52AM 5 is it?" Yeah, I'll strike that. It's also  
6 something that cuts both ways, but it's unanswered.

7 Okay, so that's 172, our next is 189.

8 Since I anticipate that there will be an  
9 objection to this, you can tell me what your theory  
10 is.  
:53AM

11 MR. GOLDSTEIN: Your Honor, this is a call  
12 between Harris and Emanuel, they're discussing the  
13 senate seat, and they are discussing possible  
14 individuals and the name Jesse Jackson comes up, and  
15 it's our contention, Your Honor, that this explains  
16 why Rahm Emanuel did what he did in going forward to  
17 eventually make himself the emissary for this deal,  
18 Your Honor.  
:53AM

19 MR. SCHAR: Judge, we would object to this.  
20 This is not for the mind of the defendant; it's not  
21 relevant. The defendant understands and knows he's  
22 going to get on the stand and testify as to what he  
23 believes was occurring, what the basis was, and it's  
24 not going to be this phone call.  
:53AM

25 THE COURT: The objection is sustained.

1           196.

2           MR. GOLDSTEIN: Your Honor, as to 196, I do  
3 believe we have agreement. I think the government  
4 wants the entire call come in under completeness.

:54AM

5           MR. SCHAR: Yes.

6           MR. GOLDSTEIN: We have no objection to that.

7           THE COURT: Okay.

8           MR. GOLDSTEIN: Same with 199, I believe.

9           MR. SCHAR: We don't object to 199.

:54AM

10          THE COURT: Tab 209, it's short.

11          MR. GOLDSTEIN: It is a short one. I believe  
12 we have an agreement on that, as well.

:54AM

13          MR. SCHAR: There's two parts. The first  
14 part we would object to, I think the second part  
15 that begins at --

16          THE COURT: Except what I have listed as  
17 offered here is this Page 8, line 41, that's what's  
18 on the sheet.

:55AM

19          MR. GOLDSTEIN: It's actually Page 4,  
20 starting at the top, line 1.

21          THE COURT: Okay, so the sheet is in error.  
22 That's fine.

23          MR. GOLDSTEIN: Correct.

:55AM

24          MR. SCHAR: What the sheet has we wouldn't  
25 object to, everything else we would.

5256

1           THE COURT: Okay. So we got Page 8, line 41.  
2 So I'm talking now about what's not objected to.

3           MR. GOLDSTEIN: Okay.

4           THE COURT: Page 8, line 41 can't quite be  
5 right because it begins with Greenlee saying "that's  
6 good."

7           MR. GOLDSTEIN: I believe that it's Page 7  
8 that we're requesting. Page 7, line 44.

9           THE COURT: Line 44?

:55AM 10           MR. GOLDSTEIN: Yes.

11           THE COURT: And that ends with Page 9, line  
12 18?

13           MR. GOLDSTEIN: Correct.

14           THE COURT: The government's position?

:56AM 15           MR. SCHAR: I just have to check real quick.

16           THE COURT: Yes.

17           (Brief pause).

18           MR. SCHAR: Judge, we wouldn't object if it's  
19 Page 8, line 36.

:56AM 20           THE COURT: Say that to me again.

21           MR. SCHAR: Page 8, line 36, through the  
22 following section, I think everything that is on the  
23 bottom of Page 7 through Page 8 to 36, we wouldn't  
24 object.

25           THE COURT: So you're not objecting to that

1 which begins with Page 8, line 36?

2 MR. SCHAR: Correct.

3 THE COURT: Through Page 9 through the first  
4 word of line 20?

:56AM

5 MR. SCHAR: Yes.

6 THE COURT: Okay, so that we're agreed on.

7 MR. GOLDSTEIN: We're agreed with that.

:57AM

8 THE COURT: Okay, now let's deal with the  
9 rest of it, now that I understand what's agreed to.

10 MR. GOLDSTEIN: As far as the earlier stuff,  
11 Your Honor --

:57AM

12 THE COURT: That's what we're dealing with  
13 next.

14 MR. GOLDSTEIN: We're actually withdrawing  
15 it.

:57AM

16 THE COURT: You are withdrawing it?

17 MR. GOLDSTEIN: The first portion. The only  
18 argument we would have is to the second portion, we  
19 are, as far as completeness, at Page 7, line 44  
20 through the point at, which the government suggests,  
21 which is Page 8, line 36, we have requested that  
22 that come in under completeness.

:57AM

23 THE COURT: Okay, now say that again because  
24 I was making notes.

25 MR. GOLDSTEIN: I apologize.

1           THE COURT: That's okay.

2           MR. GOLDSTEIN: The first part, as we said,  
3 we will withdraw.

4           THE COURT: Okay.

5           MR. GOLDSTEIN: The second part we're  
6 requesting begin at Page 7, line 44.

7           THE COURT: Okay, let me read this.

8           (Brief pause).

9           THE COURT: These seem to me to be different  
10 subjects. The subject to the first part is media  
11 coverage. In fact, the first line of this section  
12 begins with "we're going to be able to get coverage"  
13 and then he mentions the subject, and Greenlee  
14 responds about "it's gonna be harder because there  
15 is so much other good stuff out there," which,  
16 according to Greenlee, must have been said tongue in  
17 cheek.

18           And then the Governor says some more about  
19 poverty, and then Greenlee talks about getting a  
20 second story out of something, and then there's  
21 discussion which I think has to do with some kind of  
22 appearance somewhere because he's asked about "are  
23 you going to be at poverty" which is the shorthand  
24 for something. And he said "yes," and then there's  
25 a reference to a possible Senate candidate who will

1 also be there, and then the Governor says something  
2 about "we'll get press."

3 what I'm willing to do, and I think he's  
4 going to have to testify to explain, I'm willing to  
:01PM 5 let you start at line 22, because that is, at least,  
6 -- he's talking about something else but at least  
7 it's relevant to the stuff that's agreed to, because  
8 he's going to appear -- I mean, obviously, it means  
9 he's going to appear at the place where the Senate  
:01PM 10 candidate is there, and then they go into the Senate  
11 stuff again, and then the rest of the stuff comes  
12 in, so that makes sense to me; so that's my ruling.

13 I think that's it.

14 MR. SCHAR: I think that's it, Your Honor.

15 THE COURT: who are your witnesses on Monday?

16 MR. GOLDSTEIN: We're just working on  
17 scheduling. We will have them in the afternoon and  
18 we will notify Mr. Schar as soon as we have them.

19 THE COURT: Right. Notify me, too.

20 MR. GOLDSTEIN: Will do.

21 THE COURT: But this leads to another  
22 question I have, any of the witnesses that you're  
23 going to have on Monday going to be lengthy  
24 witnesses?

25 MR. GOLDSTEIN: I believe Mr. Ettinger is

1 going forward with his case-in-chief first.

2 THE COURT: Mr. Ettinger, are any of your  
3 witnesses going to be lengthy?

4 MR. ETTINGER: Yes.

:02PM

5 THE COURT: Okay.

6 MR. ETTINGER: Judge, we don't know if we're  
7 going to be --

8 MR. GOLDSTEIN: I apologize, I didn't want  
9 to --

:02PM

10 MR. ETTINGER: No, that's all right.

11 we're still in discussions with our  
12 codefendant as to if they have any witnesses to put  
13 on before we put on our case.

:02PM

14 Assuming we're going ahead first, Judge, it  
15 will be Julie Blagojevich first and then Robert. I  
16 expect Robert to be lengthy, Julie won't be.

17 THE COURT: Okay.

:02PM

18 MR. SCHAR: Judge, a couple of things just to  
19 be prepared for Monday. First of all, at least as  
20 of today, I think, we have no discovery on any  
21 potential witnesses. I don't know if they don't  
22 have any in terms of reports, statements, documents  
23 they're going to be using.

:03PM

24 I also don't know if they plan on calling  
25 experts still. We've gotten cursory -- or a letter

1 that is generally explaining the topic. I think  
2 Your Honor had indicated that if they were going to  
3 call experts, we'd be entitled to get that. We  
4 haven't gotten anything. Maybe they don't intend  
5 to, but I'll flag that.

6 And then, you know, obviously, we'll address  
7 it witness-by-witness basis, but particularly with  
8 Julie Blagojevich, you know, we're going to have  
9 some concerns about the extent of her testimony and  
10 the relevance at this point if it's going to be  
11 anything like the opening statement which was a long  
12 discussion of their history and everything that  
13 they've done, which we don't think it's particularly  
14 relevant.

15 Maybe Mr. Ettinger is not going to get into  
16 that, but it would be the same if defendant Robert  
17 Blagojevich testifies, and Rod Blagojevich, for that  
18 matter.

19 I guess we'll take it on a witness-by-witness  
20 basis to see whether or not any witnesses, obviously  
21 including Robert, but whether any of the witnesses  
22 are going to testify prior to; for instance,  
23 defendant Rod Blagojevich testifying as to  
24 conversations which the defendant participated in  
25 which obviously would be hearsay. I just don't want

1 to waste the jury's time and we're going to stop and  
2 go, stop and go.

3 THE COURT: We have two issues here.

4 Experts?

:04PM

5 MR. ETTINGER: No.

:04PM

6 MR. GOLDSTEIN: Judge, we have notified -- we  
7 notified originally potential expert witnesses, the  
8 government asked for more clarification, we did  
9 provide more clarification as to what these expert  
10 witnesses would testify to.

:04PM

11 Basically, we have two potential expert  
12 witnesses, one is an individual that would testify  
13 about what can be done with campaign funds. It may  
14 even be an area of stipulation, I'm not sure, but  
15 it's a fairly minor point.

:05PM

16 The other is an individual who is a former  
17 Internation Revenue Service agent who's evaluated a  
18 lot of financial documents that the government has  
19 provided to us in terms of Mr. And Mrs. Blagojevich.  
20 This individual would give his opinion as to the  
21 evaluation of the financial statements and how the  
22 Blagojeviches kept up with their finances and their  
23 taxes.

:05PM

24 THE COURT: Did this expert give you a  
25 report?

1           MR. GOLDSTEIN: We do not have a written  
2 report yet from this expert.

3           THE COURT: Generally speaking, I require  
4 written reports, and this is not for discovery  
5 purposes; whatever the obligations of discovery may  
6 or may not be with respect to this, I require it  
7 because otherwise I cannot make pretrial  
8 rulings--well, we're well past that point--I cannot  
9 make rulings on admissibility before the witness  
10 takes the stand and we get a lot of delay.  
:05PM

11          But, basically, I need to have a written  
12 report at least 48 hours before the witness takes  
13 the stand, and that's an absurdly short period of  
14 time but it's usually enough for me. So, basically,  
15 you sort of have to get cracking on that.  
:06PM

16          The second issue -- it's always good to  
17 actually look at the ruling.

18          (Brief pause).

19          THE COURT: Is there anything I should know  
20 from the lawyers?  
:08PM

21          MR. ETTINGER: Judge, I was going to confer  
22 with Mr. Schar and try to find out what his concerns  
23 were about my client.

24          THE COURT: Oh, okay. All right, you don't  
25 have to tell me now.  
:08PM

1           MR. ETTINGER: Well, what I would say to the  
2 jury, I mean, I want to go into his background, not  
3 for hours, just so the jury knows who he is, his  
4 military history. I'm not going to spend an hour on  
5 it, but --  
:09PM

6           THE COURT: But from whom are you getting  
7 this?  
:09PM

8           MR. ETTINGER: Robert.  
9           THE COURT: Okay. What about the other ones?  
:09PM

10          MR. ETTINGER: Judge, she's 20 minutes or  
11 15 minutes, I don't expect it to be much longer.  
12          MR. SCHAR: I probably have an hour on cross  
13 or so.  
14          (Laughter.)  
:09PM

15          THE COURT: Okay.  
16          MR. NIEWOEHNER: Your Honor, I think it's  
17 just a matter of, we understand that with Robert  
18 Blagojevich some amount of background would be  
19 appropriate. In opening, however, as an example,  
20 Mr. Ettinger described background check on him, how  
21 they gave him a top secret clearance, that seems to  
22 be outside the scope of sort of the biographical --  
:09PM

23          MR. ETTINGER: We're going into his  
24 background.  
25          MR. NIEWOEHNER: Well, we understand that  
:09PM

1 he's going to give military history and positions  
2 and responsibilities, all that's fine, but detailed  
3 descriptions of the Persian missile, et cetera,  
4 answers like that seems to be outside of what we  
5 need.

:10PM

6 MR. ETTINGER: Judge, I had a chart with  
7 pictures of each of the generals and I'm going to  
8 e-mail that to them today.

:10PM

9 THE COURT: I believe that that statement was  
10 not made entirely in earnest.

11 MR. NIEWOEHNER: I think that's right, Judge.

:10PM

12 THE COURT: I'll let you proceed in a  
13 reasonable way. I think you're aware of the risk  
14 that inheres in any defendant getting on the witness  
15 stand and telling the jury how wonderful their past  
16 life has been and doesn't pay a lot of attention to  
17 the charges in question.

:10PM

18 MR. ETTINGER: We're going to pay attention  
19 to the charges in question.

:11PM

20 THE COURT: Now, I believe the second thing  
21 that was raised by Mr. Schar was, the order of  
22 witnesses in the defendant Rod Blagojevich's case,  
23 and I believe Mr. Schar was waving a flag at  
24 you--the "you," the record should show, is that I'm  
25 looking at defense counsel--the flag that he was

:11PM  
1 waving at you was is that the defendant himself is  
2 for much of what I anticipate will be going to be  
3 coming in as a foundation witness. So instead of  
4 calling the defendant last, as I believe I once said  
5 at sidebar, maybe if at the end you may be calling  
6 him first.

:12PM  
7 The only reason I say this is because if you  
8 plan to call any number of witnesses who are going  
9 to testify as to what the defendant said to them and  
10 you're going to make any use of the truth of it,  
11 then he's pretty much got to get on first, because I  
12 don't want the jury to hear something, think that  
13 it's being offered for its truth, and then the  
14 requisites are not fulfilled for its offering for  
15 its truth.

:12PM  
16 And, on top of that, some of the standard  
17 exceptions to the hearsay rule, which we've seen a  
18 lot of here, is statements made to explain action,  
19 explain somebody's conduct. If you have witnesses  
20 testifying about what the defendant Rod Blagojevich  
21 said to them, it's hard to see how this is going to  
22 be used on the theory that it explains the conduct  
23 of the witness unless the acts of the witness are  
24 themselves material to the charge and relevant to  
25 the charge; and, in many cases, they won't be.

1           So the difficult choice for the defense here  
2 would be do you put the defendant on first or near  
3 to first and then follow with a bunch of  
4 corroborating witnesses who could discuss some of  
5 the statements of the defendant made to them because  
6 he's testified to them and have been confronted by  
7 the prosecution or whether you'll try some other  
8 course of conduct.

9           So it's a live issue. And it's precise  
10 application to any particular witness you're going  
11 to offer, I don't know, but it's fair notice to you  
12 that you're going to have to deal with this  
13 question.

14           The advantage that you have, and this is a  
15 significant advantage, to putting the defendant on  
16 first is that you might possibly glean some idea of  
17 how the jury receives that testimony which might  
18 influence the choice of subsequent witnesses.

19           It is also possible that, in some  
20 circumstances, I might allow you to bifurcate the  
21 defense testimony, get some of the foundation stuff  
22 laid first that it can be neatly severed from the  
23 rest of it, have that cross-examined, and then put  
24 him on afterwards. But the difficulty with that for  
25 you is is that unlike almost any other witness, once

:13PM

:14PM

:14PM

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:15PM

:15PM           1 the defendant gets on the witness stand, lots of  
               2 limitations about scope are gone because we apply  
               3 the scope rule in cases in which one side calls a  
               4 witness, the other side cross examines and goes  
               5 outside the scope and I sustained the objection, and  
               6 one of the reasons you sustain the objection is the  
               7 other side can call that witness. This is a case  
               8 where in the case of a defendant in a criminal case,  
               9 they can't be called.

:15PM           10 So I don't want you to think that my possible  
               11 agreement that you can bifurcate his testimony means  
               12 that you can limit his testimony once he gets on the  
               13 witness stand. There are, of course, limitations  
               14 with respect to scope that apply even to those in  
               15 criminal cases, but they're much narrower than the  
               16 ones that typically apply. This is just so you know  
               17 how I'm thinking.

:16PM           18 Anything else we have to deal with?

19                MR. ETTINGER: Rule 29, Judge.

:16PM           20 THE COURT: There's a Rule 29 motion that you  
               21 want to make?

22                MR. ETTINGER: Yes, Your Honor.

23                THE COURT: Do you want to make that motion  
               24 now?

:16PM           25 MR. ETTINGER: Yes, Judge; you heard the

1 evidence.

2 THE COURT: Assuming, as I must, that the  
3 evidence must be taken in the strongest light of the  
4 prosecution's case, the motion is denied.

:16PM

5 You can make yours orally or in writing, as  
6 you see fit.

7 MS. KAESEBERG: we filed a motion, but by  
8 leave of Court I think we're going to file a  
9 memorandum by Monday morning.

:16PM

10 THE COURT: Swell.

11 Anything else?

:17PM

12 MR. GOLDSTEIN: Your Honor, just a couple of  
13 things. We understand what you're saying as far as  
14 the defendant testifying and we're and we certainly  
15 have those types of plans. There's one witness, as  
16 far as scheduling, that we're looking into, we're  
17 just trying to get confirmation as to his  
18 availability, it's Mr. John Filan. He is more of an  
19 individual from pre-tapes, okay, that we --

:17PM

20 THE COURT: I remember. That's the BOP guy.

21 MR. GOLDSTEIN: Correct.

22 THE COURT: Okay.

:17PM

23 MR. GOLDSTEIN: As far as documents, we have,  
24 as of today, no documents in addition to what the  
25 government has provided to us. Any documents we may

1 use are, at this point, what the government has  
2 provided to us.

3 And then as to the expert witness, the former  
4 IRS agent, that's Mr. Lee Williams that Mr. Adam  
5 spoke about in opening.

6 It isn't even completely his expert  
7 testimony, but what we anticipate him doing is  
8 similar to what Agent Schindler did as far as  
9 evaluating documents, bank accounts, and that.

10 :17PM THE COURT: Right. But as I understand the  
11 rules, he's got to write it down.

12 MR. GOLDSTEIN: Some of it is not all expert  
13 testimony, it's just compiling and creating charts  
14 and publishing those charts.

15 :18PM THE COURT: All right. What you can do,  
16 because the government -- since I presume you asked  
17 for the government's expert report and got them --

18 MR. SCHAR: We didn't offer an expert.

19 THE COURT: Well, you offered --

20 :18PM MR. SCHAR: A summary witness.

21 THE COURT: That's right, you offered a  
22 summary witness.

23 MR. SCHAR: And, obviously, if they are  
24 offering a summary witness, you know, as long as we  
25 :18PM get the chart in enough time, at least to see if the

1 charts are accurate, then, obviously, that's fine,  
2 but if they're offering to try to qualify somebody  
3 as an expert to offer opinions, that's a different  
4 situation. Agent Schindler did not do that.

:18PM

5 THE COURT: Okay, you can give them a report.  
6 And if it is, it's partly summary, and I suspect  
7 that that's correct, I think what you're telling me  
8 makes sense to me. You just can give them the  
9 exhibits and that's all you need.

:19PM

10 But if you have opinions, then he or she has  
11 got to put them in writing and 48 hours is fairly  
12 short notice, but they ought to be able to deal with  
13 that.

14 Anything else?

:19PM

15 MR. SCHAR: No.

16 MR. GOLDSTEIN: Sorry, one other thing. As  
17 far as the tapes, the tapes that have already been  
18 played by the government, do we have permission to  
19 play those in our case-in-chief, if need be?

:19PM

20 THE COURT: Generally speaking, you do,  
21 subject to the government's objection that you're  
22 checking something in the way that makes it  
23 misleading, which is a little different from the  
24 usual completeness objection.

:19PM

25 But if you've played this part, particularly

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1 if it's been played four weeks since the jury's  
2 heard it, you may have to play some more parts of  
3 it. But I, obviously, have an interest in having as  
4 little replay as possible in the interest of time,  
5 but we'll see.

6 Thanks. See you Monday.

7 THE MARSHAL: All rise.

8 (Adjournment taken from 12:20 o'clock p.m. to  
9 July 19, 2010, at 10:00 a.m.)

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:20PM

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4 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
5 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED  
6 MATTER

7

8 /s/Blanca I. Lara date

9 \_\_\_\_\_

10 Blanca I. Lara Date

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